IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 143 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

M.F.DARE

Appearance:

MR BY MANKAD APP for Petitioner

MR JB PARDIWALA for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 16/11/2000

ORAL JUDGEMENT

The State of Gujarat has, by filing this Criminal Revision Application under Sec. 397 of the Criminal Procedure Code, 1973 (for short "the Cr.P.C.), challenged the correctness, legality and propriety of order dt. 5/2/1998 passed below application Ex.2 submitted by the

present revision opponents in Sessions Case No. 428 of 1995 which was pendingt on file of the learned Additional Sessions Judge, Court No.10, City Civil Court, Ahmedabad. The revision opponent nos. 1 to 3 were the accused before the Sessions Court.

2. When this Criminal Revision Application was taken up for final hearing, the learned advocates for both the parties jointly submitted that this Criminal Revision Application be disposed of without assigning any reasons in the judgment, of course subject to certain directions to the trial Court.

3. Having heard the learned advocates for both the parties and on going through an impugned order which is challenged in this Criminal Revision Application and the grounds stated in the memo of this Criminal Revision Application, this Court is of the view that in no case, the order which is challenged in this Criminal Revision Application can be said to be illegal, or incorrect or perverse order. The learned Additional Sessions Judge has discharged the accused for want of sanction which was required to be sought under Sec.197 of Cr.P.C. The learned Additional sessions Judge has specifically observed in his judgment as follows:-

> "Admittedly, the officers were on their official duty and offence has been committed is alleged to have been committed during the course of their duty and as such the protection as required under the provisions of Section 197(1) of the Code can be made available to them." .....
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> " But at the same time, it would not be resulted in cognizable while the State Government can scrutinize the position thereafter, if any sanction is given again, the case can be prosecuted, as the Court has given clean chit to these Police Officers at this juncture....."

4. In view of what is observed by the learned Additional Sessions Judge, he has discharged the accused for want of sanction under Sec.197 of Cr.P.C., but he has made it clear that the State Government can accord necessary sanction under Sec.197 of Cr.P.C. if Government so desires.

5. In view of this, this Criminal Revision Application is devoid of merits and it requires to be dismissed. The complainant of the case may approach the

sanctioning authority for getting the sanction under Sec.197 of Cr.P.C., if he is so advised and on such application being made, proper authority may deal with the same in accordance with law as expeditiously as possible. With this liberty to the complainant, this Criminal Revision Application stands dismissed and is accordingly dismissed. Rule is discharged.

Date: 16/11/2000. (H.H.MEHTA,J.)
ccshah